

DFEH Proposed Procedural Regulations

Title 2

Division 4.1 – Department of Fair Employment and Housing

Chapter 1. Procedures of the Department of Fair Employment and Housing

§ 10000. Statement of Purpose

These regulations interpret, implement, and supplement the procedures of the Department of Fair Employment and Housing (department) set forth in Article 1 of Chapter 6 (employment, Unruh Civil Rights Act, Ralph Civil Rights Act, and Disabled Persons Act discrimination complaints) (Gov. Code, § 12960, et seq.) and Article 2 of Chapter 6 (housing discrimination complaints) (Gov. Code, § 12980, et seq.) of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900, et seq.). These regulations and provisions of the FEHA shall govern the practice and procedure of the department.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f), 12948, 12960–12976, and 12980–12989.3, Government Code.

§ 10001. Definitions

(a) “Accusation” means the charging document issued by the department pursuant to section 12965 or 12981 of the Government Code.

(b) “Authorized signature” means any of the following: (1) the signature of an attorney whom the complainant has identified in writing as his or her legal representative, licensed to practice law in the State of California; (2) the signature of any person other than an attorney whom the complainant has identified in writing as a person authorized to sign a complaint on his or her behalf; (3) the signature of a parent or legal guardian who signs a complaint on behalf of his or her minor child; (4) the signature of a direct relative (parent, child, sibling, etc.) with an interest in the estate of a deceased complainant or the executor of the estate of a deceased complainant.

(c) “Commission” means the Fair Employment and Housing Commission and includes any Commissioner, officer, employee, or other individual delegated any function, power, or duty of the Commission.

(d) “Complainant” means a person claiming to be aggrieved by a practice unlawful under any law the department enforces and who files a complaint of discrimination with the department.

(e) “Complaint” means a complaint of discrimination filed with the department by a person claiming to be aggrieved by a practice made unlawful by any law the department enforces.

(f) “Conciliation” means bringing two opposing sides together to reach a compromise in an effort to resolve a complaint of discrimination filed with the department and may include, but is not limited to, pre-determination settlement negotiations and mediation conferences as well as post-investigation conciliation and/or settlement conferences.

(g) “Continuing violation” means a series of similar acts, at least one of which occurs inside the applicable limitations period, which violate the FEHA.

(h) “Co-respondent” means an entity or individual who may share liability with a primary respondent for an alleged violation of a law the department enforces, and against whom a complainant of discrimination has been filed with the department or an accusation has been issued.

(i) “Department” means the Department of Fair Employment and Housing and includes any officer, employee, or other individual delegated any function, power, or duty of the department.

(j) “Departmental appeal” means a verbal or written appeal or request made to the department by a complainant or respondent seeking reconsideration of the department’s determination regarding a complaint of discrimination.

(k) “Director” means the Director of the Department of Fair Employment and Housing and includes any officer, employee, or other individual delegated any function, power, or duty of the director.

(l) “District or Regional Administrator” means any employee, officer, or other individual delegated the authority to supervise the staff and day-to-day operations of one or more department district, field or regional office(s).

(m) “District Office” means any field, local, or regional office of the department supervised by a district and/or regional administrator, employee, officer or other individual delegated the authority to supervise investigatory staff and their day-to-day operations.

(n) “Filed or to file” Except for complaints created on the Internet via the Department’s automated right-to-sue notice system at www.dfeh.ca.gov, a complaint is “filed” with the department when it is date-stamped “received” by the department.

(o) “Housing accommodation” means: (1) any building, structure, or part of any building or structure that is occupied as, or intended for occupancy as, a residence by one or more individuals or families; and (2) any vacant land offered for sale or lease for the construction thereon of any building, structure, or part of a building or structure that is intended for occupancy as a residence by one or more individuals or families.

(p) “Protected activity” means: (1) seeking the advice of the department or commission, whether or not a complaint is filed, and if a complaint is filed, whether or not the complaint is sustained; (2) assisting or advising any person in seeking the advice of the department or commission, whether or not a complaint is filed, and if a complaint is filed, regardless whether the complaint is

sustained; (3) opposing practices reasonably believed to be a violation of the Fair Employment and Housing Act (FEHA); (4) any activity perceived as opposition to unlawful discrimination; (5) contacting, communicating with or participating in the proceeding of a local human rights, civil rights, or fair housing agency regarding any act prohibited by a law the department enforces; (6) contacting, communicating with or participating in the proceedings of the department or commission based on a good faith belief that the FEHA has been violated; (7) involvement as a potential witness in an activity of the department or the commission.

(q) “Protected basis” means any basis or characteristic upon which discrimination is prohibited by the FEHA, the Unruh Civil Rights Act, the Ralph Civil Rights Act, or any other law the department enforces.

(r) “Registered complaint” means a filed complaint to which the department has assigned a department case file number.

(s) “Respondent” means an entity or individual alleged to have committed a practice made unlawful by a statute the department enforces and against whom a complaint of discrimination has been filed with the department or an accusation has been issued.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12901-12903, 12925, 12927, 12930-12932, 12940, 12950, 12955-12956, 12960, 12961, 12963.1(a), 12963.7, 12964, 12965, 12971, 12980-12981, 12984-12989.3, 7, 12989, and 12995, Government Code; Section 7285.5, Title 2, California Code of Regulations (Register 99, No. 12).

Subchapter 1. Employment, Unruh Civil Rights Act, Ralph Civil Rights Act, and Disabled Persons Act Complaints

§ 10002. Filing a Complaint of Employment Discrimination with the Department

(a) Any individual claiming to be aggrieved by an employment practice made unlawful by the FEHA may file with the department a verified complaint, in writing, that shall describe the unlawful conduct alleged and include the following, on a form prescribed by the department:

(1) complainant’s name, and, where available, address, telephone number and e-mail address;

(2) respondent’s name, address, and, where available, telephone number and e-mail address. If applicable, the job title and/or capacity in which the respondent is being named also shall be included;

(3) a description of the alleged act or acts of discrimination, harassment or retaliation;

(4) the date or dates each alleged act of discrimination, harassment or retaliation occurred, including the date of the last or most recent alleged act;

(5) each protected basis or characteristic upon which the

alleged discrimination or harassment was based:

(6) for retaliation complaints, the date and type of protected activity in which the complainant engaged;

(7) the complainant's declaration, under penalty of perjury under the laws of the State of California, that to the best of his or her knowledge and belief, all information stated in the complaint is true and correct;

(8) the signature of the complainant, or an authorized signature, and the date signed;

(9) any other information that may be required by the department.

(b) No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice occurred, except that this period may be extended as set forth in section 12960(d), of the Government Code, and sections 10006 and 10018 of the department's regulations.

(c) For all complaints not filed online via the department's Web site, the filing date shall be the date a district office receives a signed complaint, regardless whether the complaint is signed by the complainant in the office or the complaint is signed elsewhere and transmitted to the district office via United States (U.S.) mail, electronic mail, facsimile, or hand delivery. All complaints not filed online shall be date-stamped received by the department on the same day the department first receives the signed complaint. A limited exception exists where a complainant cannot sign a complaint for investigation before the applicable statute of limitation runs. In this limited circumstance, the department shall file the unsigned complaint and date-stamp it received before the statute of limitation runs. Notwithstanding the foregoing, the department shall obtain a signature on the unsigned complaint before it is served.

(d) The filing date for complaints filed via the department's Web site shall be the date on which the complaint was filed online, which is printed on the complaint after the words "DATE FILED."

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), and 12960(b) & (d), Government Code.

§ 10003. Liberal Construction of Complaints

All complaints filed by the department shall be liberally construed to effectuate the purpose of the laws the department enforces to safeguard the civil right of all persons to seek, obtain and hold employment without discrimination on account of any protected basis or characteristic covered by the laws the department enforces. Where the facts alleged in a discrimination complaint support a claim of retaliation, harassment, or any other claim over which the department has jurisdiction, the complaint shall be construed to include those claims within the scope of a discrimination claim, regardless whether such other claims are expressly stated.

Note: Authority cited: Section 12930 (e) Government Code. Reference: Sections 12920, 12921(a), 12930 (f)(1), 12960(b), and 12993(a), Government Code.

§ 10004. Categories of Employment Discrimination Complaints Accepted by the Department for Filing

_____ (a) Complaint filed for investigation. The department shall only accept a complaint for investigation where the conduct alleged, if proven, would be a violation of the laws the department enforces, the statute of limitation has not run (except as otherwise provided in these regulations), and each named respondent or co-respondent is an entity or individual over which the department has jurisdiction under the laws the department enforces.

_____ (b) Complaint taken for filing purposes only. A complaint the department accepts for filing purposes only, which the department does not investigate.

_____ (c) Complaint filed to request an immediate right-to-sue. A complaint, which the department does not investigate, filed to request an immediate right-to-sue notice.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12960(b), Government Code.

§ 10005. Obtaining a Right-to-Sue Notice From the Department

_____ (a) Any individual claiming to be aggrieved by an employment practice made unlawful by the FEHA may forgo having the department investigate his or her complaint and instead obtain an immediate right-to-sue. A right-to-sue notice issued by the department shall state that the aggrieved party may bring a civil action against the person or entity named in the complaint within one year from the date of the notice.

_____ (b) Once the department issues a right-to-sue notice for a particular complaint, the department shall not investigate that complaint. Obtaining an immediate right-to-sue and waiving the department's investigation is advisable only if a complainant has been instructed by his or her attorney to obtain a right-to-sue.

_____ (c) An immediate right-to-sue may be obtained via the department's automated right-to-sue system accessible on the department's Web site at www.dfeh.ca.gov. An automatic right-to-sue also may be obtained by submitting a completed right-to-sue notice packet to a department district, regional or field office via U.S. or electronic mail or facsimile. A right-to-sue packet may be obtained by telephone or written request (delivered via facsimile or U.S. or electronic mail) to a department district, regional or field office, or by downloading the packet from the department's Web site. With the exception of its automated right-to-sue system, all right-to-sue notices issued by the department shall be delivered by U.S. or electronic mail. A right-to-sue notice shall not be provided to

any member of the public who appears in person at any department office without the prior consent of the district or regional administrator.

(d) If a complaint for investigation has been filed with the department and the department does not issue an accusation within one-hundred-fifty (150) days of the filing date of the complaint, the Department shall issue a written notice advising complainant of his or her right to request a right-to-sue and withdraw the complaint. When a right-to-sue notice has not earlier been requested, the department shall issue a right-to-sue notice at the completion of its investigation or one year after the complaint is filed, whichever occurs first.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12965(b), Government Code.

§ 10006. Filing a Complaint with the Department Alleging a Violation of the Unruh Civil Rights Act, Ralph Civil Rights Act, or Disabled Persons Act

(a) Any person claiming to be aggrieved by an alleged violation of the Unruh Civil Rights Act, Ralph Civil Rights Act or Disabled Persons Act may file a complaint for investigation with the department. The department's procedures for processing employment discrimination complaints set forth in these regulations also shall apply to complaints alleging a violation of the Unruh or Ralph Civil Rights Acts or Disabled Persons Act (unless the complaint also alleges housing discrimination over which the U.S. Department of Housing and Urban Development (HUD) has concurrent jurisdiction), except that the department shall not issue a right-to-sue notice as none is required to file a civil action alleging a violation of the Unruh or Ralph Civil Rights Acts or Disabled Persons Act.

(b) The department's procedures set forth in these regulations for processing housing discrimination complaints dual-filed with HUD shall apply to any Unruh Civil Rights Act, Ralph Civil Rights Act or Disabled Persons Act complaint filed with the department alleging an unlawful housing practice over which HUD has concurrent jurisdiction.

(c) No complaint may be filed with the department after the expiration of one year from the date upon which the alleged Unruh or Ralph Civil Rights Act or Disabled Persons Act violation occurred, except as follows:

(1) If an aggrieved person is unaware of the identity of the person or persons liable for an alleged violation of the Ralph Civil Rights Act, the statute of limitation may be extended for a period of time, not to exceed one year from the date the aggrieved person becomes aware of the identity of the person liable for the alleged violation, but in no case exceeding three years from the date of the alleged unlawful act;

(2) For a period of time not to exceed one year from the date a person allegedly aggrieved by an unlawful practice attains the age of majority.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; sections 12930(f)(2), 12948, and 12960(b) & (d), Government Code.

§ 10007. Intake

(a) To determine whether the department has jurisdiction over the conduct about which an individual seeks to complain, or the respondent against whom an individual seeks to file a complaint, the department shall screen potential complaints filed for investigation and, where appropriate, conduct an intake interview.

(b) An individual shall schedule an appointment for an intake interview for an employment discrimination complaint via the department's Web site at www.dfeh.ca.gov or by calling the department's toll-free telephone number listed on its Web site. Individuals also may call the department's toll-free number to obtain basic technical assistance or referrals.

(c) Individuals whose statute of limitation is about to run on a complaint for investigation, or who seek to file a complaint for investigation alleging a violation of the Unruh Civil Rights Act or Ralph Civil Rights Act, or Disabled Person's Act may schedule an intake appointment with a district office listed on the department's Web site by telephoning the district office directly, e-mailing or faxing the district administrator, or telephoning the department's toll-free number and requesting the telephone number of the nearest district office. Contact shall be made with a district office via telephone, e-mail, facsimile, or other written or electronic means. Service shall not be provided to any member of the public who appears in person at a district office without the prior consent of the district administrator.

(d) The department shall provide individuals for whom an intake appointment has been made written confirmation of the date and time of the intake interview.

(e) Individuals for whom an intake appointment has been made shall provide the department the following information in writing prior to the commencement of the intake interview on a form prescribed by the department:

(1) the name and, where available, the address, telephone number, and e-mail address of the individual seeking to file the complaint;

(2) the name, address and, where available, telephone number and e-mail address of the entity or person against whom the individual wishes to file a complaint. If applicable, the number of individuals employed by the entity or person against whom the individual wishes to file a complaint also shall be provided;

(3) the name of the employer, if applicable, as it appears on the most recent U.S. Internal Revenue Service form W-2 the individual received, against whom the individual wishes to file a complaint;

(4) the name and, where known, home address, telephone number, e-mail address, and job title of any person against whom the individual wishes to file a complaint of discrimination;

(5) each protected basis or characteristic upon which the discriminatory conduct about which the individual wishes to complain was based;

(6) the discriminatory conduct or treatment the individual experienced and the date or dates such discriminatory conduct or treatment occurred;

(7) for retaliation complaints, the protected activity in which the individual engaged and the date of the protected activity;

(8) the reason the individual believes the conduct experienced was discriminatory and, if applicable, the name, address, telephone number, e-mail address and job title of any person the employer treated more favorably;

(9) the name, address, telephone number, e-mail address and job title of each person believed to have relevant information regarding the complaint of discrimination and a brief summary/description of the information;

(10) whether the individual has filed a complaint with the U.S. Equal Employment Opportunity Commission (EEOC);

(11) the following additional information for employment discrimination complaints:

A. date of hire or application for job at issue;

B. job title and salary at time the discriminatory treatment or conduct occurred;

C. name and title of immediate supervisor or interviewer;

D. if employment was terminated, name of replacement and protected basis, if any, where known;

E. if employment was terminated or prospective employer failed to hire, whether other employment was subsequently obtained and if so, the date of hire, job title, and salary of replacement job;

F. If not hired for desired position:

a. how information about available position and salary was obtained;

b. whether application for desired position was made verbally or in writing;

c. name and/or job title of person to whom application was submitted or made and date of application;

d. date and manner in which decision not to hire was communicated;

e. name and salary, if known, of person hired for desired job;

(12) any other information that may be required by the department.

(f) The department shall cancel the intake appointment of any individual who fails to provide the foregoing information by the deadline the department designates.

(g) Intake interviews shall be conducted by telephone or other electronic means unless the department determines that special circumstances, such as the need for a sign language interpreter, require an in-person intake interview.

(h) The department shall liberally construe the facts alleged by a potential complainant when evaluating whether to accept a complaint.

(i) Notwithstanding the foregoing, the department shall only accept complaints for investigation where:

(1) The conduct alleged, if proven, would be a violation of the laws the department enforces.

(2) The statute of limitation has not run. For complaints alleging a continuing violation, the most recent act of harm alleged shall have occurred within the applicable limitation period.

(3) Each named respondent or co-respondent is an entity or individual over which the department has jurisdiction under the laws the department enforces. Where there is doubt about whether the department has jurisdiction over a particular respondent, the complaint shall be taken by the department and the issue of jurisdiction investigated and analyzed during the investigation.

(j) At the conclusion of the intake interview, complainants with claims that are jurisdictional with another state agency shall be advised accordingly and provided referral information, regardless whether the department also has jurisdiction over some or all of a complainant's claims.

(k) The department shall not accept complaints where the same protected bases, discriminatory acts, and allegations are or have been included in a complaint the complainant previously filed with the department or the EEOC against the same respondent(s).

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 52(f), 54.3(b), Civil Code; sections 12930(f)(1)-(2), 12948, and 12960(b) & (d), Government Code.

§ 10008. Priority Intake

(a) Individuals whose statute of limitation is about to run on a complaint for investigation, or who seek to file a complaint for investigation alleging a violation of the Unruh Civil Rights Act or Ralph Civil Rights Act, or an individual who is terminally ill, may be given priority for the purpose of scheduling an intake appointment.

(b) The department may file a complaint for investigation solely on the basis of a telephone interview with a complainant, without first obtaining the complainant's signature on the complaint, when doing so is necessary to avoid missing the statute of limitation for filing with the department. Notwithstanding the foregoing, the department shall obtain a signature on a complaint for investigation before the complaint is served.

(c) Individuals who seek to file a complaint for investigation with the department that alleges retaliation occurring within one-hundred-eighty (180) days of the individual's filing a prior complaint of discrimination with the department, or within one-hundred-eighty (180) days of that individual's

participation in an investigation conducted by the department, also may be given priority for the purpose of scheduling an intake appointment.

(d) Any other individual whose situation warrants a priority intake in the department's discretion may be given priority for the purpose of scheduling an intake appointment.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 52(f), 54.3(b), Civil Code; sections 12930(f)(1)-(2), 12940(h), 12948, and 12960(b) & (d), Government Code.

§ 10009. Drafting Complaints Filed for Investigation

The department shall draft the language of each complaint filed for investigation on a complaint form prescribed by the department. The complaint shall contain all the information identified in section 12960, subdivision (b), of the Government Code, and sections 10002 and 10007 of these regulations, and set forth the allegations in ordinary and concise language of the department's choosing, identifying in the body of the complaint material dates, the name and job title of each individual responsible for the alleged unlawful employment practices, and the manner in which they are responsible. Such individuals shall be identified in the body of the complaint regardless whether they are named as respondents or personally liable for their conduct under the laws the department enforces. The department shall liberally construe the facts alleged by a complainant when drafting a complaint and include all relevant claims supported by the facts alleged. Once drafted, a complaint may be signed by a complainant in person or sent to the complainant for signature via U.S. mail, facsimile transmission, e-mail, or other electronic means.

Note: Authority cited: Section 12930 (e), Government Code. Reference: Section 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12948, and 12960(b), Government Code.

§ 10010. Written Statement or Correspondence as Complaint

(a) If the statute of limitation will expire before an intake interview can be scheduled and completed for a complaint filed for investigation, the department may promptly initiate and conduct an intake interview by phone, without an appointment, or waive the intake process and accept a complaint for investigation using a written statement or correspondence from the complainant signed under penalty of perjury. As long as the written statement or correspondence satisfies all the requirements set forth in section 12960 of the Government Code, and section 10002 of these regulations, alleges a claim or claims over which the department has jurisdiction, and the statutory deadline to file with the department is imminent, the department may accept such a written statement or correspondence as a complaint for investigation.

(b) A statement shall be handwritten or typed and may be submitted electronically or by facsimile transmission to the department.

(c) The department may accept a statement from a complainant's attorney as long as the complainant has signed the statement of complaint or submits a signed statement authorizing the attorney to sign the complaint on his or her behalf.

(d) When intake has been waived, an investigator shall interview the complainant as soon as practicable after the complaint is filed and file an amended complaint on the form prescribed by the department. If, during the interview, the complainant presents new facts or raises new issues not included in the original complaint, they may be included in the amended complaint as long as the new facts and/or issues are based on or relate back to the facts stated in the original complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12948, and 12960(b) & (d), Government Code.

§ 10011. Complaints Taken For Filing Purposes Only

Where the department rejects at intake all or some of the allegations presented by an individual who seeks to file an employment discrimination complaint for investigation by the department, the department shall explain the reasons for rejection and offer the individual the option of filing a complaint taken for filing purposes only. A complaint accepted by the department for filing purposes only shall state the rejected allegations, which will not be investigated by the department. The department shall not dual-file the complaint with the EEOC, but will give the complainant contact information for his or her local EEOC office. Where an individual rejects the department's offer to take a complaint for filing purposes only, an individual may request that the department provide the reasons for rejection in writing, which the department shall thereafter provide.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12960(b), Government Code.

§ 10012. Director's Complaints

(a) The director, the chief counsel of the legal division, or the chief counsel's designee, in his or her discretion, may make, sign, and file a complaint for investigation that satisfies all the requirements of section 12960 of the Government Code, and section 10002 of these regulations.

(b) The director in his or her discretion may file a complaint on behalf and as representative of a group or class of persons adversely affected, in a similar manner, by a practice made unlawful by a statute the department enforces.

(c) Receipt of an individual complaint alleging a pattern of discrimination, or a request or referral from a source outside the department, including but not limited to other state or federal agencies, may result in the filing of a director's complaint.

(d) Factors the department considers when determining whether to file a director's complaint include, but are not limited to:

(1) whether the respondent employs a large workforce such that the anticipated remedy would impact a large number of individuals or an entire industry;

(2) whether the complaint allegations address an important legal issue in an area where the department seeks to establish case law;

(3) resolution of the complaint will impact civil rights in a manner consistent with the department's mission.

(e) When the department receives a request to file a director's complaint from a source outside the department, the department shall advise the requestor, if known, as soon as practicable after the decision is made whether a director's complaint will be filed. When the department decides not to file a director's complaint, an outside requestor shall also be informed of appropriate alternative avenues of redress, if any, including the filing of individual complaints by those affected by the alleged unlawful employment practice.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12960(b), and 12961, Government Code.

§ 10013. Class Complaints

(a) The director or an aggrieved person may file a complaint for investigation with the department on behalf of a group or class of persons adversely affected, in a similar manner, by an alleged unlawful practice.

(b) When an aggrieved person wishes to file a class complaint, the department shall obtain the following additional information, to the extent available, from the individual at intake:

(1) details regarding the manner in which the alleged unlawful practice has adversely affected other individuals; and

(2) the name, address, telephone number, e-mail address, and protected status of each individual besides the complainant adversely affected by the alleged unlawful practice.

(c) When the department drafts a class complaint, the complaint shall state that the individual is making the complaint on his or her behalf and on behalf of all others who have been, are, or will in the future be similarly aggrieved, or words to that effect.

(d) When a class complaint is accepted for filing, the department shall inform the complainant that, even though class language has been included in the complaint, the department shall later determine whether the complaint will be investigated as a class complaint, and inform the complainant of the decision in writing. If the department later determines that a class complaint will not be

pursued, the department may investigate the complaint as an individual complaint if circumstances warrant.

(e) Factors the department considers when determining whether to investigate a complaint as a class complaint include, but are not limited to:

(1) whether the alleged unlawful practice or its adverse effects can be articulated as being class based;

(2) whether it will be more efficient for the department to investigate a complaint on a class basis rather than to investigate multiple single complaints filed by individual complainants;

(3) whether the respondent is a large employer in the community, or the complaint addresses an issue that is unique, critical to the development of the law, or important to the community.

(f) The department shall notify the respondent in writing within one year after the filing of a complaint when the department determines that a complaint will be investigated as a class complaint, and provide the respondent sufficient time to respond in writing to the notice.

(g) For any complaint treated by the department as a class complaint for purposes of investigation, conciliation, and accusation, an accusation shall issue, if at all, within two years after the filing of the complaint.

(h) When the department determines that a complaint will be pursued as a class complaint, the department shall provide the complainant written notice that includes, at a minimum, the following statements:

(1) the class complaint/group investigation designation extends the investigation period one year;

(2) although the investigative period is extended, the deadline for the department to issue a right-to-sue in a class complaint alleging an unlawful employment practice remains one year from the date the complaint was filed with the department;

(i) The director, in his or her discretion, may determine whether a director's complaint also shall be filed and pursued in conjunction with a class complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12961, and 12965(a), Government Code.

§ 10014. Retaliation Complaints – Special Considerations

(a) When retaliation is included among the allegations a complainant makes at intake, and the department has determined that it will accept the complainant's claims for investigation, all allegations, including retaliation, shall be combined in one complaint.

(b) When retaliation is alleged after a complaint has already been filed with the department, and the department has determined that it will accept the retaliation claim for investigation, the department shall file a separate retaliation complaint, except as follows:

(c) If the one-year statute of limitation has run and the alleged retaliatory conduct is the same conduct complained of in the original complaint (e.g., termination) for which another discriminatory basis was originally alleged (e.g., national origin discrimination), the department shall amend the original complaint instead of taking a separate complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12940(h) and 12960(b), Government Code.

§ 10015. Disability Complaints – Special Considerations

Complainants alleging physical or mental disability discrimination in the workplace shall authorize the department in writing to request and obtain copies of all relevant medical information including, but not limited to, all relevant workers compensation files, necessary to evaluate and prosecute a disability discrimination or denial of reasonable accommodation claim. If written authorization is not provided by the complainant by the date prescribed by the department, the department may discontinue the investigation of the complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12940(a) & (m), and 12960(b).

§ 10016. Standard for Accepting Complaint When Act of Harm Occurred Outside California

Where all other jurisdictional requirements have been met for filing a complaint for investigation with the department, the department shall accept a complaint when the act of harm occurred outside California if a connection can be established between the complainant and some act of the respondent that occurred within California.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12960(b), Government Code; section 410.10, Code of Civil Procedure; *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434 [58 Cal.Rptr.2d 899].

§ 10017. Effect of Prior Waiver Agreement/Release of All Claims

(a) Where all other jurisdictional requirements have been met for filing a complaint for investigation with the department, the department shall accept a complaint where a complainant presents at intake a signed waiver agreement or release of all claims. The investigation shall initially focus on obtaining information necessary to determine whether the complainant has validly waived his or her right to file a complaint with the department.

(b) Where a respondent produces a signed waiver agreement or release of all claims during an investigation, the department shall promptly

obtain information necessary to determine whether the complainant has validly waived his or her right to file a complaint with the department.

(c) The department shall close any case where it has been determined that a complainant has validly waived his or her right to file a complaint with the department unless the department determines that:

(1) the complaint alleges an unlawful systemic policy or practice that adversely affects a large number of employees;

(2) an anticipated affirmative remedy would impact a large number of employees or an entire industry in a manner consistent with the department's mission;

(3) the complaint allegations address an important legal issue in an area where the department seeks to establish case law.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12920, 12930(f)(1), and 12960(b), Government Code.

§ 10018. Complaints Taken After Expiration of Statute of Limitation Due to Department Error

The one-year time limit for filing a complaint of discrimination with the department may be tolled in cases where the department misleads the complainant about filing obligations, commits errors in processing the complaint, or improperly discourages or prevents the complainant from filing at all.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12960(d), Government Code; *Dept. Fair Empl. & Hous. v. Cairo* (Jan. 6, 1984) No. 84-04, FEHC Precedential Decs.1984-85, CEB 3 [1984 WL 54284 (Cal.F.E.H.C.)].

§ 10019. Complaints Dual-filed with EEOC

(a) Complaints filed with the department that include at least one claim over EEOC has concurrent jurisdiction shall be dual-filed with the EEOC, but investigated by the department, unless after preliminary investigation it is determined that the department does not have jurisdiction (e.g., religious employer exempt from coverage under the FEHA that is covered by Title VII of the 1964 Civil Rights Act.)

(b) The department shall not accept complaints where the same protected bases, discriminatory acts, and allegations are or have been included in a complaint the complainant previously filed with the EEOC against the same respondent(s).

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12960(b), and 12963.

§ 10020. Complaints Transferred to EEOC for Processing

(a) A complaint for investigation filed with the department by an individual who alleges retaliation for filing a prior complaint with the EEOC, or participating in an investigation conducted by the EEOC, shall be waived to the EEOC for processing and immediately closed. Where the EEOC does not have jurisdiction because the 300-day federal statute of limitation has passed, the retaliation complaint shall be processed by the department on a non-priority basis.

(b) Mohasco complaints:

(1) Complaints over which the EEOC has concurrent jurisdiction that are filed with the department between two-hundred-forty (240) and three-hundred (300) days of the first alleged act of harm ("Mohasco time frames") shall be waived to the EEOC for processing.

(2) All primary and co-respondent complaints filed for investigation with the department that fall within the Mohasco time frames shall be waived to the EEOC for processing and immediately closed. The department shall inform the complainant during intake that the EEOC will decide whether it will proceed against the co-respondents, if any.

(3) Complaints that fall within the Mohasco time frames that include claims over which the EEOC does not have concurrent jurisdiction shall be accepted by the department as two- separate complaints: One complaint shall be taken that alleges all the claims over which the EEOC has concurrent jurisdiction and shall be dual-filed and waived to the EEOC for processing; another complaint shall be taken that alleges all claims over which the EEOC does not have concurrent jurisdiction which shall not be dual-filed and shall remain with the department for investigation.

(c) Religious non-profit institutions:

(1) When it is determined at intake that an employer is exempt from the FEHA because it is a non-profit religious corporation, but the EEOC has jurisdiction over the religious employer under Title VII of the 1964 Civil Rights Act, a complaint shall be accepted by the department, registered, and waived to the EEOC for processing;

(2) When it is determined at intake that neither the department nor the EEOC has jurisdiction over a religious employer, the department shall accept a complaint for filing purposes only and promptly close the complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12960(b), and 12963, Government Code; *Mohasco Corp. v. Silver* (1980) 447 U.S. 807 [65 L.Ed.2d 532, 100 S.Ct. 2486].

§ 10021. Service of Complaints

(a) Only verified complaints filed for investigation with the department by complainants not represented by counsel shall be served by the department. The department may, but is not required, to also serve:

(1) verified complaints filed for investigation with the department by complainants represented by counsel;

(2) complaints accepted only for filing purposes from complainants not represented by counsel;

(3) complaints accepted only for filing purposes from complainants represented by counsel.

(b) The department shall strive to initiate service upon all respondents named in a verified complaint filed for investigation by a complainant not represented by counsel, or any other complaint the department decides to service, within ten (10) working days after the complaint is filed. Whenever service is required or initiated pursuant to the department's discretion, service shall be initiated not more than sixty (60) days after the complaint is filed.

(c) The date of service is the date the complaint is placed in the mail (certified mail only) or personally delivered to the respondent.

(d) All department service documents shall be placed in an envelope clearly marked "PERSONAL AND CONFIDENTIAL: TO BE OPENED BY ADDRESSEE OR DESIGNATE ONLY" regardless whether the documents are served by personal service or certified mail with return receipt requested.

(e) If a complaint sent via certified mail to a respondent's correct last known address is returned as undeliverable, or because the respondent refused service, the department shall promptly take steps to reserve the complaint including, but not limited, initiating personal service of a verified complaint filed for investigation.

(f) The department may forego serving by certified mail and promptly initiate personal service whenever the circumstances warrant.

(g) The department shall not serve complaints issued in response to requests for an immediate right-to-sue, regardless whether or not a complainant is represented by counsel.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12962, Government Code; *Wasti v. Superior Court* (2006) 140 Cal.App.4th 667 [44 Cal.Rptr.3d 625].

§ 10022. Amending Complaints

(a) The department may amend an open complaint of discrimination to:

(1) add bases or allegations for which the statute of limitation has not run;

(2) add or delete facts or change the wording of a complaint;

(3) correct the name of a respondent;

(4) add new bases, respondents, or complainants after the

expiration of the one-year statute of limitation where the amendment either relates back to the same material facts set forth in the original complaint, or the original complaint contains language that specifically references or identifies the bases, respondents, or complainants to be added;

(5) add an allegation of retaliation after the one-year statute of limitation has run where the alleged retaliatory conduct is the same conduct complained of in the original complaint (e.g., termination) for which another discriminatory basis was originally alleged (e.g., national origin discrimination);

(6) add class allegations to an individual complaint and pursue the complaint as a class complaint.

(b) When an open complaint of discrimination has been amended:

(1) respondents shall be given sufficient notice and time to respond to new allegations;

(2) the filing date of the amended complaint remains the same as the original filing date.

(c) The department shall not amend an open complaint to add:

(1) allegations that are beyond the one year statute of limitation if the allegations relate to a different set of facts than those alleged in the original complaint;

(2) bases or allegations that would have been rejected if raised at intake;

(3) bases or allegations refuted by evidence obtained during the investigation.

(4) Under the foregoing circumstances, the department shall offer the complainant a complaint for filing purposes only, which will not be investigated, and which, if accepted by the complainant, shall contain the new bases and/or allegation(s).

(d) The department shall amend closed employment discrimination complaints as requested by complainants or their counsel.

(e) When the department amends a closed complaint, the department shall neither reopen the complaint nor make an administrative determination on the validity, retroactivity, or merits of the amendment.

(f) When a closed complaint is amended by the department, the original filing date and right-to-sue shall remain in effect, as shall the original statute of limitation for filing a private lawsuit.

(g) The department shall handle nonsubstantive changes to an original complaint, such as correcting an incorrect case number, incorrect address or misspelled word, by correcting the original complaint, not by amending it.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12960(b), Government Code.

§ 10023. Response to Complaint

Unless granted an extension by the department, a written response to a complaint filed for investigation with the department shall be provided to the

department within thirty (30) days of service of the complaint, except as follows: An automatic stay shall apply to any complaint referred to the department's pre-determination mediation program. Unless granted an extension by the department, a response shall be provided to the department no later than twenty-one (21) days after mediation is declined, or the complaint is not settled at an early mediation conference.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)-(g), 12960(b), and 12963, Government Code.

§ 10024. Conciliation

(a) Conciliation efforts undertaken by the department may include post-investigation conciliation and/or settlement conferences as well as pre-determination settlement negotiations and mediation conferences.

(b) Pre-determination settlement (PDS) negotiations are confidential; however, any settlement agreement entered into as a result of PDS negotiations that is signed by the department, as well as the terms of settlement, are not confidential.

(c) Everything that transpires at a mediation conference is confidential, including any settlement agreement entered into by a complainant and respondent, and the terms thereof, and shall not be disclosed by the mediator or the department's mediation unit staff to any department district office staff or the public.

(d) Notwithstanding the foregoing, a copy of any settlement agreement executed in connection with a mediation conference shall be provided to the department's mediation unit where the confidentiality of the settlement agreement shall be maintained.

(e) If the department determines after investigation that a preponderance of evidence exists to prove a complaint's allegations, both the complainant and respondent shall be invited to participate in a conciliation conference on equal terms.

(f) Everything that transpires at a post-investigation conciliation conference shall be kept confidential, except as follows:

(1) issues established as fact during the investigation;

(2) any executed settlement agreement, signed by the department, and the final terms of settlement;

(3) new facts presented by the respondent at the conciliation conference that cause the department to re-evaluate the case and determine not to issue an accusation. A respondent providing such information at a conciliation conference shall authorize the department to use the information to close the case.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f) and 12963.7, Government Code.

§ 10025. Complaint Investigation

(a) After any employment discrimination complaint alleging facts sufficient to constitute a violation the FEHA is filed for investigation with the department, the department shall initiate prompt investigation thereof.

(b) Where it is disputed or unclear that the department has jurisdiction over a particular respondent or allegation, the investigation shall initially focus on obtaining the information and documents necessary to determine whether the department has jurisdiction.

(c) During the course of its investigation the department may, but is not required, to issue and serve investigative subpoenas, written interrogatories, and requests for production of books, records and documents. If an individual or organization fails to comply with a subpoena, written interrogatories, or requests for production of documents properly issued and served by the department, the department shall file a petition with the superior court, in accordance with section 12965.3 of the Government Code, to compel compliance with its investigative discovery.

(d) The department shall gather during the course of an investigation all critical evidence necessary to determine whether an unlawful practice has occurred. For a workplace disability discrimination complaint, for example, critical evidence includes, but is not limited to, specific information regarding the essential functions of the job or jobs at issue and all relevant medical records of the complainant.

(e) For all workplace discrimination complaints, the department shall obtain the complainant's complete personnel file or files from the respondent.

(f) The department shall prioritize early in the investigative process complex cases and cases that appear to have merit to better allocate the department's resources.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)-(g), 12963, and 12963.1–12963.5, Government Code.

§ 10026. Investigative Subpoenas

(a) During the course of an investigation, the department may issue and serve upon an individual, corporation, partnership, association, public entity, or other organization a subpoena, on a form prescribed by the department, to require the attendance and testimony of a witness by deposition or other investigative proceeding or means including, without limitation, an investigative interview.

(b) A subpoena for an investigative interview or deposition, or other investigative proceeding, also may require the production of books, records, documents, and physical materials in the possession of, or under the control of, the individual or organization named on the subpoena.

(c) Service of a subpoena for an investigative interview or deposition, or other investigative proceeding, shall be made in compliance with section

12963.1(b) of the Government Code in such manner as to allow the individual or organization named on the subpoena reasonable time for compliance. In no event shall an investigative subpoena indicate a date for appearance or compliance that is less than fifteen (15) days after the date service of the subpoena is completed.

(d) No individual named on a subpoena for investigative interview or deposition, or other investigative proceeding, shall be obliged to attend as a witness before the department at a place out of the county in which that person resides, unless the distance is less than 150 miles from the individual's place of residence or good cause exists to require attendance of the witness at greater distance. Each witness who has appeared pursuant to an investigative subpoena shall, upon demand, be paid by the department the same fees and mileage allowed by law to witnesses in civil cases.

(e) Investigative interviews are distinct from investigative depositions. Witnesses examined by the department pursuant to a subpoena for an investigative interview need not be placed under oath and their testimony need not be recorded by stenographic or other means. Objections, if any, made at the time of an investigative interview also need not be recorded, and evidence objected to may be considered by the department in its investigation notwithstanding any objection.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(g), 12963.1, and 12963.3, Government Code.

§ 10027. Investigative Requests for Production and Inspection

(a) During the course of an investigation, the department may issue and serve requests for production for inspection and copying of books, records, documents, and physical materials including, but not limited to, land or other commercial or real property such as worksites or housing accommodations, and electronically stored information in the possession or under the control of an individual or organization. A request for production may be issued and served on the same individuals and organizations and in the same manner as subpoenas may be issued and served by the department under section 12963.1 of the Government Code.

(b) A request for production shall identify with reasonable particularity the things that are to be inspected and specify a reasonable time, place, and manner of making the inspection, performing the copying, or producing copies of the requested books, records, documents, and physical materials.

(c) Within fifteen (15) days after service of a request for production or such longer time as the department may agree to, the recipient of the request shall serve on the department a written response to each item requested, either stating that inspection and copying will be permitted as requested or objecting to the request and stating the grounds of the objection. Unless a request for production is objected to, the recipient of the request shall comply with the department's requests and permit inspection and copying, or produce copies of

the requested books, records, documents, and physical materials, within thirty (30) days after service of the department's requests for production, or such longer time as the department may agree to.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(g), 12963.1 and 12963.4, Government Code.

§ 10028. Priority Case Processing/Case Grading System

(a) The department shall prioritize investigation of the following complaints: (1) complaints alleging a violation of the Ralph Civil Rights Act; (2) any employment complaint that is a companion to a Ralph Civil Rights Act complaint; (3) a complaint filed by a terminally ill complainant; (4) complaints alleging retaliation occurring within one-hundred-eighty (180) days of the complainant filing a prior complaint of discrimination with the department or participating in a FEHA-related investigation, hearing or court process; (5) any other complaint investigation that warrants priority in the department's discretion.

(b) In addition to the foregoing, to better allocate the department's resources, the department shall identify any employment discrimination complaint filed for investigation that raises complex factual or legal issues, likely would be meritorious, or whose successful litigation would impact a large number of employees if its allegations are proven. The department shall initially designate such complaints as priority complaints and process them in the same manner as other priority complaints. At its discretion, the department's legal division may later designate a priority complaint as a high priority complaint, depending upon its strength and potential for impact.

(c) The department shall preliminarily designate all other employment discrimination complaints filed for investigation as standard complaints.

(d) Such initial designations shall continually be re-evaluated by the department throughout the investigative process, particularly after an employer's response is received and analyzed. Thus, a complaint initially designated a standard complaint later could be designated a priority complaint upon receipt and evaluation of additional evidence. Likewise, a complaint originally designated a priority complaint could be designated a standard complaint after reevaluation.

(e) Factors the department considers when determining whether a complaint is a priority or a standard complaint may include, but are not limited to:

(1) whether the alleged unlawful practice affects a group or class of employees or applicants;

(2) the complexity or strength of the facts alleged;

(3) the severity of the alleged harm;

(4) whether the respondent is large enough such that a remedy would impact a large number of individuals or an entire industry;

(5) whether the complaint allegations address an important legal issue in an area where the department seeks to establish case law.

(f) Priority complaints shall be eligible for allocation of additional department resources and early and on-going collaboration with the department's legal division.

(g) At no time shall the department disclose to any person outside the department the case grade or designation assigned to any complaint. All records of discussions regarding the grade or designation of a complaint will be marked "Confidential," and be retained in the Confidential section of the department's case file.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1) and 12963, Government Code.

§ 10029. Investigations Not Completed Within Statutory Time Limit

(a) Where an investigation is not completed within the statutory time limit the department may:

(1) continue the investigation;
(2) taking into consideration the complexity of the case, time necessary to complete the investigation, and likelihood of proving discrimination, close the case where continued investigation would be an inefficient use of the department's resources; or

(3) if the case is dual-filed with the EEOC, waive the case to the EEOC for continued investigation.

(b) When an investigation is completed after the statutory time limit and the complaint has been found meritorious, the department shall schedule a conciliation conference.

(c) The department shall not issue an accusation when an investigation is completed after the statutory time limit and a complaint has been found meritorious. However, the department, in its discretion, may issue a director's complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12930(f)(1) & (h), 12963, and 12965(a), Government Code.

§ 10030. Receipt of Confidential Information

(a) "Confidential information" means information acquired by the department in the course of its duties that the department has agreed will not be released to anyone but department staff. Information marked "confidential" by the provider shall not be kept confidential unless there has been prior agreement by the department not to disclose the information.

(b) Information shall be kept confidential by the department only when:
(1) there is no other way for the department to obtain the information; and

(2) the information is expected to lead to other information necessary to the department's investigation which shall not be kept confidential.

(c) Information accepted by the department under an agreement of confidentiality shall not be released by the department for any purpose including, without limitation, obtaining information from a third party, negotiating a settlement, substantiating a case closure or proving a case at hearing or trial.

(d) Information accepted by the department under an agreement of confidentiality shall be kept in a separate envelope or electronic file within a case file that shall be clearly marked as follows:

**CONFIDENTIAL INFORMATION OBTAINED PURSUANT TO
GOVERNMENT CODE SECTION 12932(b) AND EVIDENCE
CODE SECTION 1040. NOT TO BE RELEASED TO ANYONE
BUT DFEH PERSONNEL.**

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 1040, Evidence Code; sections 12930(f)(1)-(2) and 12932(b), Government Code.

§ 10031. Accusation

(a) If, after investigation, it is determined by the department that a complaint has merit, the director in his or her discretion may cause a written accusation to be issued in the name of the department. The discretion to issue an accusation may be delegated to the department's chief counsel or his or her designated associate or assistant chief counsel.

(b) An accusation may be issued, if at all, after an unsuccessful post-investigation conciliation conference or, if circumstances warrant, the department may issue an accusation without holding a conciliation conference.

(c) The department has discretion not to issue an accusation when circumstances warrant. Factors considered by the department when determining whether to issue an accusation include, but are not limited to: (1) the strength and sufficiency of the evidence of unlawful conduct; (2) the likelihood of prevailing on the merits at hearing or trial; (3) the availability and allocation of department resources; (4) whether the alleged violation addresses an important legal issue in an area where the department seeks to establish case law; (5) whether issuance of an accusation and subsequent litigation thereof are likely to impact civil rights in a manner consistent with the department's mission; (6) whether the respondent has offered the complainant an equitable remedy the complainant has refused.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(h) and 12965(a), Government Code.

§ 10032. Notice of Case Closure

(a) Whenever a complaint filed for investigation with the department is

withdrawn by the complainant or dismissed by the department, or an investigation is closed or terminated by the department for any reason, the department shall promptly notify the complainant and respondent of the case closure, and the reason for closure, in writing. The department also shall provide the complainant a list of resources for filing a civil complaint in small claims court or locating private counsel.

(b) For complaints alleging unlawful employment practices in violation of the FEHA for which a right-to-sue notice has not already been issued, a notice of case closure shall also constitute a right-to-sue notice.

(c) When closing a complaint dual-filed with the EEOC, the department shall satisfy all reporting requirements arising from the department's work-sharing agreement with the EEOC.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12965(b) and 12971, Government Code.

§ 10033. Departmental Appeal

(a) Any individual who wishes to appeal the department's decision to reject a complaint or close a case shall direct his or her concerns to the district or regional administrator of the office that rejected or closed the complaint. Appeals may be presented verbally by telephone or in writing.

(b) Regardless whether an appeal is verbal or written, the district or regional administrator, or other individual delegated any function, power, or duty of the district or regional administrator, shall respond in writing. Where the appeal concerns a complaint rejected for investigation, the district or regional administrator, or his or her designee, also shall draft a complaint for filing purposes only, to be included with the written response.

(c) Any individual dissatisfied with the response of the district or regional administrator may direct his or her further appeal to the deputy director of employment.

(d) Regardless whether the further appeal is verbal or written, the deputy director of employment, or other individual delegated any function, power, or duty of the deputy director of employment, shall respond in writing.

(e) Any individual dissatisfied with the response of the deputy director of employment may direct his or her further appeal to the director.

(f) Regardless whether the further appeal is verbal or written, the director, or his or her designee, shall respond in writing.

(g) The decision of the director is final and may not be appealed to any other department employee, officer, or other individual delegated any function, power, or duty of the department.

(h) Any concerns regarding the handling of an open complaint shall be directed to the district or regional administrator of the office where the complaint is being investigated.

(i) Any individual dissatisfied with the response of the district or regional administrator, or his or her designee, may direct his or her concerns to the deputy director of employment.

(j) The response of the deputy director of employment, or other individual delegated any function, power, or duty of the deputy director of employment, is final and may not be appealed to any other department employee or officer while the complaint is open. After the complaint is closed, any remaining concerns may be directed to the director, whose response, and/or the response of his or her designee, shall be final and nonappealable to any other department employee, officer, or other individual delegated any function, power, or duty of the department.

(k) Any respondent who wishes to complain about the issuance of an accusation against the respondent shall direct his or her concerns to the chief counsel of the department's legal division.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f) and 53.4(2), Civil Code; sections 12960(b), 12965, and 12971, Government Code.

§ 10034. EEOC Substantial Weight Review

Any party aggrieved by the department's final action taken on a complaint dual-filed with the EEOC may, within fifteen (15) days of the action, request that the EEOC conduct a review in accordance with the procedures set forth by the EEOC for a Substantial Weight Review.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12960(b), 12965, 12971, Government Code; 29 CFR §§ 1601.76, 1607.77.

Subchapter 2. Housing Discrimination Complaints

§ 10035. Filing a Complaint of Housing Discrimination with the Department

(a) Any individual claiming to be aggrieved by a housing practice made unlawful by the FEHA, or any other law the department enforces, may file with the department a verified complaint, in writing, that shall describe the unlawful conduct alleged and include the following, on a form prescribed by the department:

(1) complainant's name and, where available, address, telephone number and e-mail address;

(2) respondent's name and, where available, address, telephone number and e-mail address;

(3) a description of the alleged act or acts of housing discrimination, harassment or retaliation;

(4) the date or dates each alleged act of housing discrimination,

harassment or retaliation occurred, including the date of the last or most recent act alleged;

- (5) a description of the housing accommodation at issue;
- (6) the address of the housing accommodation at issue;
- (7) each protected basis or characteristic upon which the alleged housing discrimination or harassment was based;
- (8) for retaliation complaints, the date and type of protected activity in which the complainant engaged;
- (9) the complainant's declaration, under penalty of perjury under the laws of the State of California, that to the best of his or her knowledge and belief, all information stated in the complaint is true and correct;
- (10) the signature of the complainant, or an authorized signature, and the date signed;
- (11) any other information that may be required by the department.

(c) No complaint may be filed after the expiration of one year from the date upon which the alleged unlawful practice occurred, except that this period may be extended as set forth in sections 10037 and 10052 of the department's regulations.

(d) The filing date shall be the date the department receives a signed complaint, regardless whether the complaint is signed by the complainant in a department office or the complaint is signed elsewhere and transmitted to the department via U.S. mail, electronic mail, facsimile, or hand delivery. The filing date for complaints referred by the U.S. Department of Housing and Urban Development (HUD) is the date the HUD complaint is received by the department. All complaints shall be date-stamped received by the department on the same day the department first receives the signed complaint. A limited exception exists where a complainant cannot sign a complaint before the applicable statute of limitation runs. In this limited circumstance, the department shall file the unsigned complaint and date-stamp it received before the statute of limitation runs. Notwithstanding the foregoing, the department shall obtain a signature on the unsigned complaint before it is served.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12955(d), 12980(a)-(b), Government Code.

§ 10036. Liberal Construction of Complaint

All complaints filed by the department shall be liberally construed to effectuate the purpose of the laws the department enforces to safeguard the civil right of all persons to seek, obtain and hold housing without discrimination on account of any protected basis or characteristic covered by the laws the department enforces. Where the facts alleged in a housing discrimination complaint support a claim of retaliation, harassment, or any other claim over which the department has jurisdiction, the complaint shall be construed to include

those claims within the scope of the discrimination claim, regardless whether such other claims are expressly stated.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12920, 12921(b), 12930(f)(1)-(2), 12960(b), 12980(a), and 12993(a), Government Code.

§ 10037. Filing a Housing Discrimination Complaint with the Department Alleging a Violation of the Unruh Civil Rights Act, Ralph Civil Rights Act, or Disabled Persons Act

(a) Any person claiming to be aggrieved by an alleged violation of the Unruh Civil Rights Act, Ralph Civil Rights Act or Disabled Persons Act may file a complaint for investigation with the department. The department's procedures for processing employment discrimination complaints set forth in these regulations also shall apply to housing discrimination complaints alleging a violation of the Unruh or Ralph Civil Rights Acts or Disabled Persons Act (unless the complaint also alleges housing discrimination over which the U.S. Department of Housing and Urban Development (HUD) has concurrent jurisdiction), except that the department shall not issue a right-to-sue notice.

(b) Any Unruh Civil Rights Act, Ralph Civil Rights Act or Disabled Persons Act complaint filed with the department that alleges an unlawful housing practice over which HUD has concurrent jurisdiction shall be processed by the department in the manner set forth in these housing regulations.

(c) No complaint may be filed with the department after the expiration of one year from the date upon which the alleged Unruh or Ralph Civil Rights Act or Disabled Persons Act violation occurred, except as follows:

(1) If an aggrieved person is unaware of the identity of the person or persons liable for an alleged violation of the Ralph Civil Rights Act, the statute of limitation may be extended for a period of time, not to exceed one year from the date the aggrieved person becomes aware of the identity of the person liable for the alleged violation, but in no case exceeding three years from the date of the alleged unlawful act

(2) For a period of time not to exceed one year from the date a person allegedly aggrieved by an unlawful practice attains the age of majority.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 52(f), 54.3(b), Civil Code; sections 12930(f)(2), 12948, 12955(d), and 12960(d), 12980(a), Government Code.

§ 10038. Intake

(a) To determine whether the department has jurisdiction over the conduct about which an individual seeks to complain, or the respondent against whom an individual seeks to file, the department shall screen potential housing discrimination complaints and, where appropriate, conduct an intake interview.

- (b) An individual may initiate the interview process by calling the department's toll-free telephone number for the Housing Unit listed on the department's Web site at www.dfeh.ca.gov. Individuals also may call the department's toll-free number to obtain basic technical assistance or referrals.
- (c) Individuals seeking to schedule an intake appointment shall provide the department the following information in writing, prior to the scheduling of an intake interview, on a form prescribed by the department:
- (1) the name and, where available, address, telephone number, and e-mail address of the individual seeking to file the complaint;
 - (2) the name and, where available, address, telephone number, and e-mail address of any other adults who sought housing with the individual or who reside or would have resided with the individual in the housing accommodation at issue;
 - (3) the names and ages of any children who sought housing with the individual or who reside or would have resided with the individual in the housing accommodation at issue;
 - (4) the name and, where available, address, telephone number, and e-mail address of the person or entity against whom the individual seeks to file a complaint ("respondent");
 - (5) whether the respondent is an owner, manager, developer, management company, real estate broker, lending institution or other entity;
 - (6) the address and, if applicable, name of the property where the housing accommodation was sought;
 - (7) whether the desired housing accommodation was a single family home or an apartment; if an apartment, the number of units at the location;
 - (8) each protected basis or characteristic upon which the discriminatory conduct about which the individual wishes to complain was based;
 - (9) the discriminatory conduct or treatment the individual experienced and the date or dates such discriminatory conduct or treatment occurred;
 - (10) for retaliation complaints, the protected activity in which the individual engaged and the date of the protected activity;
 - (11) the reason the individual believes the conduct experienced was discriminatory and, if applicable, the name, address, telephone number, and e-mail address of any tenant, applicant, or homebuyer the individual believes was treated more favorably;
 - (12) the name, address, telephone number, and e-mail address of each individual believed to have relevant information regarding the complaint of housing discrimination;
 - (13) whether the individual has filed the same complaint with the U.S. Department of Housing and Urban Development (HUD);
 - (14) the name, address, telephone number and e-mail address of any other agency, organization, or group with which the individual has filed the same complaint of discrimination;
 - (15) whether a civil complaint alleging the same unlawful housing practice(s) has been filed and, if so, a copy of the complaint;

(16) the following additional information for complaints alleging refusal or denial to show, rent, lease, sell or finance a housing accommodation:

- A. how information about the vacancy or sale was obtained;
- B. the terms of the sale, rental, or financing sought;
- C. whether an application was submitted and, if so, the submission date;
- D. if an application was not submitted, the reason no application was submitted;
- E. the date of the denial or refusal;
- F. the reason given for the denial or refusal;
- G. the name address, telephone number, e-mail address and title of the person who made the denial or refusal;
- H. whether a lease or contract was signed and, if so, a copy of the executed lease or contract;
- I. the name, telephone number, and e-mail address of the person or persons who obtained the housing accommodation sought, if known;

(17) the following additional information for complaints alleging a discriminatory eviction:

- A. date of initial notice;
- B. date required to vacate;
- C. whether the individual has been served a Notice of Unlawful Detainer and, if so, the date of the notice and the court date;
- D. the reason or reasons given for the eviction;
- E. the name, address, telephone number, and e-mail address of others who have been evicted;

(18) any other information that may be required by the department.

(e) Upon receipt of the foregoing information on the form prescribed by the department, the department shall contact the individual and schedule an intake appointment.

(f) Intake interviews shall be conducted by telephone or other electronic means unless the department determines that special circumstances, such as the need for a sign language interpreter, require an in-person intake interview.

(g) The department shall liberally construe the facts alleged by a potential complainant when evaluating whether to accept a complaint.

(h) Notwithstanding the foregoing, the department shall only accept a complaints where:

(1) The conduct alleged, if proven, would be a violation of the laws the department enforces.

(2) The statute of limitation has not run. For complaints alleging a continuing violation, the most recent act of harm alleged shall have occurred within the applicable limitations period.

(3) Each named respondent or co-respondent is an entity or individual over which the department has jurisdiction under the laws the department enforces. Where there is doubt about whether the department has jurisdiction over a particular respondent, the complaint shall be taken by the department and the issue of jurisdiction investigated and analyzed during the investigation.

(i) At the conclusion of the intake interview, complainants with claims that are jurisdictional with another state agency shall be advised accordingly and provided referral information, regardless whether the department also has jurisdiction over some or all of a complainant's claims.

(j) The department shall not accept complaints where the same protected bases, discriminatory acts, and allegations are or have been included in a complaint the complainant previously filed with the department or HUD against the same respondent(s).

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 52(f), 54.3(b), Civil Code; sections 12930(f)-(2), 12955(d), 12980(a), Government Code.

§ 10039. Priority Intake

(a) The following may be given priority for the purpose of scheduling an intake appointment for a housing discrimination complaint:

(1) individuals whose statute of limitation is about to run;

(2) individuals alleging a failure to rent where the desired unit is still available;

(3) individuals facing an impending and allegedly discriminatory eviction where action by the department may delay the eviction;

(4) individuals who are terminally ill;

(5) individuals complaining about conduct that, if proven, would constitute a violation of the Ralph Civil Rights Act;

(6) any other individual whose situation warrants a priority intake in the department's discretion.

(b) The department may file a complaint solely on the basis of a telephone interview with a complainant, without first obtaining the complainant's signature on the complaint, when doing so is necessary to avoid missing the statute of limitation for filing with the department. Notwithstanding the foregoing, the department shall obtain a signature on the complaint before it is served.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 52(f), 54.3(b), Civil Code; sections 12930(f)(1)-(2), 12955(d), 12980(a), Government Code.

§10040. Testing

(a) Department staff may conduct a telephone test during the intake of

a housing discrimination complaint, before a complaint is filed, to test for discriminatory selection practices without identifying themselves or the purpose of their inquiry.

(b) No test shall be conducted by department staff in connection with a housing discrimination complaint after the department files the complaint.

(c) Following the filing of a complaint of discrimination, department staff shall not contact a respondent without identifying himself or herself and stating whether the contact is for the purpose of investigation or conciliation.

(d) If testing is desired by the department after a complaint is filed, a test may be conducted by a fair housing agency.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12985, Government Code; *Havens Realty Corp. v. Coleman* (1982) 455 U.S. 363 [102 S.Ct. 1114, 71 L.Ed.2d 214]; *Inland Mediation Bd. v. City of Pomona* (2001) 158 F.Supp.2d 1120.

§ 10041. Drafting Housing Discrimination Complaints

With the exception of HUD-generated complaints, the department shall draft the language of each housing discrimination complaint filed with the department on a complaint form prescribed by the department. The complaint shall contain all the information identified in section 12980, subdivision (a), of the Government Code, and sections 10035 and 10038 of these regulations, and set forth the allegations in ordinary and concise language of the department's choosing, identifying the following in the body of the complaint:

(a) the protected basis or bases for the complaint;

(b) all relevant facts, including pertinent dates, that indicate a causal connection between the protected basis and the act of discrimination alleged;

(c) the reason or reasons the housing provider gave the complainant to explain why the housing benefit was denied;

(d) the sections of the Government or Civil Code alleged to have been violated;

(e) any other information required by the department.

The department shall liberally construe the facts alleged by a complainant when drafting a complaint of housing discrimination and include all relevant claims supported by the alleged facts. Once drafted, a complaint may be signed by a complainant in person or sent to the complainant for signature via U.S. mail, facsimile transmission, e-mail, or other electronic means.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12955(d), and 12980(a), Government Code.

§ 10042. Written Statement or Correspondence as Complaint

(a) If the statute of limitation will expire before an intake interview can be scheduled and completed for a housing discrimination complaint, the department may promptly initiate and conduct an intake interview by phone, without an appointment, or waive the intake process and accept a complaint for investigation using a written statement or correspondence from the complainant signed under penalty of perjury. As long as the written statement or correspondence satisfies all the requirements set forth in section 12980, subdivision (a), of the Government Code, and section 10035 of these regulations, alleges a claim or claims over which the department has jurisdiction, and the statutory deadline to file with the department is imminent, the department may accept such a written statement or correspondence as a complaint for filing purposes.

(b) A statement shall be handwritten or typed and may be submitted electronically or by facsimile transmission to the department.

(c) The department may accept a statement from a complainant's attorney as long as the complainant has signed the statement of complaint or submits a signed statement authorizing the attorney to sign the complaint on his or her behalf.

(d) When intake has been waived, an investigator shall interview the complainant as soon as practicable after the complaint is filed and file an amended complaint on the form prescribed by the department. If, during the interview, the complainant presents new facts or raises new issues not included in the original complaint, they may be included in the amended complaint as long as the new facts and/or issues are based on or relate back to the facts stated in the original complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12955(d), and 12980(a), Government Code.

§ 10043. Multiple Complainants

(a) The department shall file a separate complaint for each adult party aggrieved by an alleged unlawful housing practice unless both of the following conditions exist:

(1) The complainants are married and have the same last name;
and

(2) The allegations and fact situations are identical.

(b) When two separate complaints are taken, any minor children of the adult complainants shall be listed on only one of the complaints.

(1) The department shall determine which of the individual complaints should logically list the minor child complainant on the basis of such considerations as surname or legal custody.

(2) The adult complainant shall sign the complaint for the child

complainant as the minor child's "Guardian Ad Litem."

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 52(f), 54.3(b), Civil Code; Sections 12930(f)(1)-(2), 12955(d), 12980(a), Government Code.

§ 10044. HUD-Generated Complaints

All complaints filed with HUD that HUD refers to the department for investigation shall be directed to the department's housing intake unit. Provided all jurisdictional requirements are met, HUD-generated complaints shall immediately be assigned a department case number. A separate intake interview typically will not be conducted by the department before filing a HUD-generated complaint. Notwithstanding the foregoing, all other procedures applicable to housing discrimination complaints filed initially with the department shall apply to complaints filed initially with HUD that HUD refers to the department for investigation.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12980(a), Government Code.

§ 10045. Department-Generated Complaints

(a) The department shall refer to HUD for dual-filing all filed housing discrimination complaints not generated by HUD unless HUD lacks jurisdiction over the alleged discriminatory housing practice or the housing accommodation at issue. Unless otherwise directed by HUD, the responsibility for investigating complaints initially filed with the department that HUD accepts for dual-filing shall remain with the department.

(b) The department shall not accept complaints where the same protected bases, discriminatory acts, and allegations are or have been included in a complaint the complainant previously filed with HUD against the same respondent(s).

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12980(a), Government Code.

§ 10046. Director's Complaints

(a) The director, the chief counsel of the legal division, or the chief counsel's designee, in his or her discretion, may make, sign, and file a housing discrimination complaint that satisfies all the requirements of Government Code section 12980, subdivision (a), and section 10035 of these regulations.

(b) The director in his or her discretion may file a complaint on behalf and as representative of a group or class of persons adversely affected, in a similar manner, by an alleged unlawful housing practice.

(c) Receipt of an individual complaint alleging a pattern of discrimination, or a request or referral from a source outside the department, including but not limited to other state or federal agencies, may result in the filing of a director's complaint.

(d) Factors the department considers when determining whether to file a director's complaint include, but are not limited to:

(1) Whether the respondent is significant or large enough such that the anticipated remedy would impact a large number of individuals or an entire industry;

(2) Whether the complaint allegations address an important legal issue in an area where the department seeks to establish case law;

(3) Resolution of the complaint will impact civil rights in a manner consistent with the department's mission.

(e) When the department receives a request to file a director's complaint from a source outside the department, the department shall advise the requestor, if known, as soon as practicable after the decision is made whether a director's complaint will be filed. When the department decides not to file a director's complaint, an outside requestor shall also be informed of appropriate alternative avenues of redress, if any, including the filing of individual complaints by those affected by the alleged unlawful housing practice.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12960(b), 12961, and 12980(a) & (c), Government Code.

§ 10047. Class Complaints

(a) The director or an aggrieved person may file a housing discrimination complaint with the department on behalf of a group or class of persons adversely affected, in a similar manner, by an alleged unlawful housing practice.

(b) When an aggrieved person wishes to file a class complaint, the department shall obtain the following additional information, to the extent available, from the individual at intake:

(1) details regarding the manner in which the alleged unlawful housing practice has adversely affected other individuals; and

(2) the name, address, telephone number, e-mail address, and protected status of each individual besides the complainant adversely affected by the practice.

(c) When the department drafts a class complaint, the complaint shall state that the individual is making the complaint on his or her behalf and on behalf of all others who have been, are, or will in the future be similarly aggrieved, or words to that effect.

(d) When a class complaint is accepted for filing, the department shall inform the complainant that, even though class language has been included in the complaint, the department shall later determine whether the complaint will be investigated as a class complaint, and inform the complainant of the decision in

writing. If the department later determines that a class complaint will not be pursued, the department may investigate the complaint as an individual complaint if circumstances warrant.

(e) Factors the department considers when determining whether to investigate a complaint as a class complaint include, but are not limited to:

(1) whether the alleged unlawful practice or its adverse effects can be articulated as being class based;

(2) whether it will be more efficient for the department to investigate a complaint on a class basis rather than to investigate multiple single complaints filed by individual complainants;

(3) whether the respondent is a large housing provider in the community or statewide, or the complaint addresses an issue that is unique, critical to the development of the law, or important to the community.

(f) The department shall notify the respondent in writing within one year after the filing of a complaint when the department determines that a complaint will be investigated as a class complaint, and provide the respondent sufficient time to respond in writing to the notice.

(g) For any complaint treated by the department as a class complaint for purposes of investigation, conciliation, and accusation, an accusation shall issue, if at all, within two years after the filing of the complaint.

(h) When the department determines that a complaint will be pursued as a class complaint, the department shall provide the complainant written notice that the class complaint/group investigation designation extends the investigation period one year.

(i) The director, in his or her discretion, may determine whether a director's complaint also shall be filed and pursued in conjunction with a class complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12961, 12965(a), and 12980(a) & (c), Government Code.

§ 10048. Retaliation Complaints – Special Considerations

(a) When retaliation is included among the allegations a complainant makes at intake, and the department has determined that it will accept the complainant's claims for investigation, all allegations, including retaliation, shall be combined in one complaint.

(b) When retaliation is alleged after a complaint has already been filed with the department, and the department has determined that it will accept the retaliation claim for investigation, the department shall file a separate retaliation complaint, except as follows:

(c) If the one-year statute of limitation has run and the alleged retaliatory conduct is the same conduct complained of in the original complaint (e.g., termination of lease) for which another discriminatory basis was originally alleged (e.g., request for reasonable accommodation), the department shall amend the original complaint instead of taking a separate complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12955.7, and 12980(a) & (c), Government Code.

§ 10049. First Amendment Policy

(a) When a complainant seeks to file a housing discrimination complaint against a person who is not an owner within the meaning of section 12927(e) of the Government Code, the department shall screen the complaint at intake to determine whether it implicates protected First Amendment activity as described by the United States Court of Appeals for the Ninth Circuit in *White v. Lee* (9th Cir. 2000) 227 F.3d 1214 (*White*).

(b) Protected First Amendment activities described in *White* include, but are not limited to, writing and distributing signs, flyers, and newspapers or articles; engaging in expressive associational activities that advocate discriminatory policies; and petitioning the government for redress of grievances (e.g., filing of a lawsuit that is not frivolous or participating in the political or legislative process).

(c) Complaints that have been deemed at intake to meet the criteria set forth in paragraphs (a) and (b) above shall be referred to the chief counsel of the department's legal division, or his or her designated associate or assistant chief counsel, to confirm whether the criteria have been met and, if so, determine whether a complaint should be taken under the department's First Amendment policy.

(d) If the chief counsel or his or her designated associate or assistant chief counsel accepts the complaint for investigation, then the chief counsel or designated associate or assistant chief counsel shall draft the complaint. The complaint shall only include the specific allegations that are appropriately subject to the department's investigation under this policy.

(e) When a complaint is accepted for investigation under the department's First Amendment Policy, legal advice shall be provided by the chief counsel of the department's legal division, or his or her designated associate or assistant chief counsel, regarding the proper scope of the department's investigation. Such legal advice shall include the following three topics:

(1) Scope of Investigation: The investigation shall be limited in a manner that will permit the department to properly investigate the complaint, but not violate the respondent's First Amendment rights. The chief counsel or chief counsel's designated associate or assistant chief counsel shall provide guidance to department staff on how the specific allegations in the complaint should be investigated. The investigation shall not be overbroad, but instead shall focus on the specific allegations that were approved for an investigation under this policy. In providing this guidance, the chief counsel or his or her designated associate or assistant chief counsel shall be mindful that activities such as distributing flyers and newsletters, lobbying public officials, and petitioning the government are protected by the First Amendment. On the other hand, acts of violence, threats, or intimidation may constitute unlawful housing

discrimination that is not protected by the First Amendment. The investigation shall focus on the specific allegations that might prove a FEHA violation.

(2) Communications: The chief counsel or the chief counsel's designated associate or assistant chief counsel shall advise department staff that when communicating with a respondent, the media, or member of the public regarding an investigation under this policy, department representatives shall make clear that protected First Amendment activities do not, by themselves, constitute a violation of the FEHA.

(3) Length of Investigation: The chief counsel or his or her designated associate or assistant chief counsel shall advise department staff on the proper length of the investigation. The department shall strive to complete investigations under this policy within one-hundred (100) days. Any investigation under this policy shall be completed as expeditiously as possible, and may not exceed one-hundred (100) days without the express approval of either the chief counsel or the chief counsel's designated associate or assistant chief counsel. Under no circumstances may an investigation under this policy exceed one-hundred-eighty (180) days.

(f) If the chief counsel or chief counsel's designated associate or assistant chief counsel approves an investigation under this policy, the investigation shall be monitored by the department's legal division. The chief counsel or his or her designated associate or assistant chief counsel shall assign a department staff counsel to monitor the investigation. The monitoring staff counsel shall perform the following tasks:

(1) Case Review Every Thirty (30) Days: At least once every thirty (30) days the assigned staff counsel and assigned consultant shall discuss the status of the investigation. Topics to discuss shall include the proper scope of the investigation, and whether the investigation will be completed within one-hundred (100) days.

(2) Formal Discovery: The assigned staff counsel shall review and approve any formal investigative discovery (subpoenas, requests for production of documents, written interrogatories) to ensure that the discovery requests are not overbroad, and are limited to the allegations that have been approved for investigation by the chief counsel or the chief counsel's designated associate or assistant chief counsel.

(3) Settlement/Conciliation: Any settlement discussions or conciliation attempts in an investigation under this policy shall be conducted by the assigned staff counsel. During any such settlement discussions or conciliation attempts, the staff counsel shall take special care to ensure that the respondent is not asked to sacrifice any protected First Amendment activity to settle the action or end the investigation. Additionally, staff counsel shall not discuss protected First Amendment activity in the context of any settlement or conciliation efforts.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), and 12980(a) & (c), Government Code; *White v. Lee* (9th Cir. 2000) 227 F.3d 1214.

§ 10050. Disability Complaints – Special Considerations

Complainants alleging physical or mental disability discrimination in housing shall authorize the department in writing to request and obtain copies of all relevant medical information necessary to evaluate and prosecute a disability discrimination or denial of reasonable accommodation claim. If written authorization is not provided by the complainant by the date prescribed by the department, the department may discontinue the investigation of the complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12927(c)(1), 12930(f)(1), 12955, and 12980(a) & (c), Government Code.

§ 10051. Effect of Prior Waiver Agreement/Release of All Claims

(a) Where all other jurisdictional requirements have been met for filing a housing discrimination complaint with the department, the department shall accept a complaint where a complainant presents a signed waiver agreement or release of all claims at intake. The investigation shall initially focus on obtaining information necessary to determine whether the complainant has validly waived his or her right to file a complaint with the department.

(b) Where a respondent produces a signed waiver agreement or release of all claims during an investigation, the department shall promptly obtain information necessary to determine whether the complainant has validly waived his or her right to file a complaint with the department.

(c) The department shall close any case where it has been determined that a complainant has validly waived his or her right to file a complaint with the department unless the department determines that:

(1) the complaint alleges an unlawful systemic policy or practice that adversely affects a large number of tenants or applicants;

(2) an anticipated affirmative remedy would impact a large number of tenants or applicants, or an entire industry, in a manner consistent with the department's mission;

(3) the complaint allegations address an important legal issue in an area where the department seeks to establish case law.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12920, 12930(f)(1), and 12980(a) & (c), Government Code.

§ 10052. Complaints Taken After Expiration of Statute of Limitation Due to Department Error

The one-year statute of limitation for filing a housing discrimination complaint with the department may be tolled in cases where the department misleads the complainant about filing obligations, commits errors in processing

the complaint, or improperly discourages or prevents the complainant from filing at all.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12980(a), Government Code; *Dept. Fair Empl. & Hous. v. Cairo* (Jan. 6, 1984) No. 84-04, FEHC Precedential Decs.1984-85, CEB 3 [1984 WL 54284 (Cal.F.E.H.C.)].

§ 10053. Service of Complaints

(a) The department shall initiate service upon all respondents named in a verified housing discrimination complaint within ten (10) working days after the complaint is filed.

(b) The date of service is the date the complaint is placed in the mail (certified mail only) or personally delivered to the respondent.

(c) All department service documents shall be placed in an envelope clearly marked "PERSONAL AND CONFIDENTIAL: TO BE OPENED BY ADDRESSEE OR DESIGNATE ONLY" regardless whether the documents are served by personal service or certified mail with return receipt requested.

(d) If a complaint sent via certified mail to a respondent's correct last known address is returned as undeliverable, or because the respondent refused service, the department shall promptly initiate steps to re-serve the complaint including, but not limited to, personal service of the verified complaint.

(e) The department may forego serving by certified mail and promptly initiate personal service whenever the circumstances warrant.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12986, Government Code.

§ 10054. Amending Complaints

(a) The department may amend an open housing discrimination complaint to:

(1) add bases or allegations for which the statute of limitation has not run;

(2) add or delete facts or change the wording of a complaint;

(3) correct the name of a respondent;

(4) add new bases, respondents, or complainants after the expiration of the one-year statute of limitation where the amendment either relates back to the same material facts set forth in the original complaint, or the original complaint contains language that specifically references or identifies the bases, respondents, or complainants to be added;

(5) add an allegation of retaliation after the one-year statute of limitation has run where the alleged retaliatory conduct is the same conduct complained of in the original complaint (e.g., termination of lease) for which

another discriminatory basis was originally alleged (e.g., request for reasonable accommodation).

(6) add class allegations to an individual complaint and pursue the complaint as a class complaint.

(b) When an open complaint of discrimination has been amended:

(1) respondents shall be given sufficient notice and time to respond to new allegations;

(2) the filing date of the amended complaint remains the same as the original filing date.

(c) The department shall not amend an open complaint to add:

(1) allegations that are beyond the one year statute of limitation if the allegations relate to a different set of facts than those alleged in the original complaint;

(2) bases or allegations that would have been rejected if raised at intake;

(3) bases or allegations refuted by evidence obtained during the investigation.

(d) The department shall handle nonsubstantive changes to an original complaint, such as correcting an incorrect case number, incorrect address or misspelled word, by correcting the original complaint, not by amending it.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), and 12980(a) & (c), Government Code.

§ 10055. Response to Complaint

Unless granted an extension by the department, a response to a housing discrimination complaint filed with the department shall be provided to the department within twenty (20) days of service of the complaint, except as follows: An automatic stay shall apply to any complaint referred to the department's pre-determination mediation program. Unless granted an extension by the department, a response shall be provided to the department no later than twenty-one (21) days after mediation is declined, or the complaint is not settled at an early mediation conference.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12986, Government Code.

§ 10056. Conciliation

(a) Conciliation efforts undertaken by the department may include post-investigation conciliation and/or settlement conferences as well as pre-determination settlement negotiations and mediation conferences.

(b) Pre-determination settlement (PDS) negotiations are confidential; however, any settlement agreement entered into as a result of PDS negotiations

that is signed by the department, as well as the terms of settlement, are not confidential.

(c) Everything that transpires at a mediation conference is confidential, including any settlement agreement entered into by a complainant and respondent, and the terms thereof, and shall not be disclosed by the mediator or the department's mediation unit staff to any department district office staff or the public.

(d) Notwithstanding the foregoing, a copy of any settlement agreement executed in connection with a mediation conference shall be provided to the department's mediation unit where the confidentiality of the settlement agreement shall be maintained.

(e) If the department determines after investigation that a preponderance of evidence exists to prove a complaint's allegations, both the complainant and respondent shall be invited to participate in a conciliation conference on equal terms.

(f) Everything that transpires at a post-investigation conciliation conference shall be kept confidential, except as follows:

(1) issues established as fact during the investigation;

(2) any executed settlement agreement, signed by the department;

(3) new facts presented by the respondent at the conciliation conference that cause the department to re-evaluate the case and determine not to issue an accusation. A respondent providing such information at a conciliation conference shall authorize the department to use the information to close the case.

(g) For cases that are dual-filed with HUD, conciliation and settlement agreements shall meet all requirements specified by HUD.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)(1), 12980(i), and 12984, Government Code.

§ 10057. Complaint Investigation

(a) After any housing discrimination complaint alleging facts sufficient to constitute a violation the FEHA is filed, the department shall initiate prompt investigation thereof.

(b) Where it is disputed or unclear that the department has jurisdiction over a particular respondent or allegation, the investigation shall initially focus on obtaining the information and documents necessary to determine whether the department has jurisdiction.

(c) During the course of its investigation the department may, but is not required to, issue and serve investigative subpoenas, written interrogatories, and requests for production of books, records and documents. If an individual or organization fails to comply with a subpoena, written interrogatories or requests for production of documents properly issued and served by the department, the department shall file a petition with the superior court, in accordance with section

12965.3 of the Government Code, to compel compliance with its investigative discovery.

(d) The department shall gather during the course of an investigation all critical evidence necessary to determine whether an unlawful housing practice has occurred. For disability discrimination complaints alleging denial of a reasonable accommodation, for example, critical evidence includes, but is not limited to, relevant medical information pertaining to the complainant.

(e) The department shall prioritize early in the investigative process complex cases and cases that appear to have merit to better allocate the department's resources.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(f)-(g), 12963–12963.5, and 12980(c), Government Code.

§ 10058. Investigative Subpoenas

(a) During the course of an investigation, the department may issue and serve upon an individual, corporation, partnership, association, public entity, or other organization a subpoena to require the attendance and testimony of a witness by deposition or other investigative proceeding or means including, without limitation, an investigative interview.

(b) A subpoena for an investigative interview or deposition, or other investigative proceeding, also may require the production of books, records, documents, and physical materials in the possession of, or under the control of, the individual or organization named on the subpoena.

(c) Service of a subpoena for an investigative interview or deposition, or other investigative proceeding, shall be made so as to allow the individual or organization named on the subpoena reasonable time for compliance. In no event shall an investigative subpoena indicate a date for appearance or compliance that is less than fifteen (15) days after the date service of the subpoena is completed.

(d) No individual named on a subpoena for investigative interview or deposition, or other investigative proceeding, shall be obliged to attend as a witness before the department at a place out of the county in which that person resides, unless the distance is less than 150 miles from the individual's place of residence or good cause exists to require attendance of the witness at greater distance. Each witness who has appeared pursuant to an investigative subpoena shall, upon demand, be paid by the department the same fees and mileage allowed by law to witnesses in civil cases.

(e) Investigative interviews are distinct from investigative depositions. Witnesses examined by the department pursuant to a subpoena for an investigative interview need not be placed under oath and their testimony need not be recorded by stenographic or other means. Objections, if any, made at the time of an investigative interview need not be recorded, and evidence objected to may be considered by the department in its investigation notwithstanding any objection.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(g), 12963.1, 12963.4, and 12980(c), Government Code.

§ 10059. Investigative Requests for Production and Inspection

(a) During the course of an investigation, the department may issue and serve requests for production for inspection and copying of books, records, documents, and physical materials including, but not limited to, land or other commercial or real property such as worksites or housing accommodations, and electronically stored information in the possession or under the control of an individual or organization. A request for production may be issued and served on the same individuals and organizations and in the same manner as subpoenas may be issued and served by the department under section 12963.1 of the Government Code.

(b) A request for production shall identify with reasonable particularity the things that are to be inspected and specify a reasonable time, place, and manner of making the inspection, performing the copying, or producing copies of the requested books, records, documents, and physical materials.

(c) Within fifteen (15) days after service of a request for production or such longer time as the department may agree to, the recipient of the request shall serve on the department a written response to each item requested, either stating that inspection and copying will be permitted as requested or objecting to the request and stating the grounds of the objection. Unless a request for production is objected to, the recipient of the request shall comply with the department's requests and permit inspection and copying, or produce copies of the requested books, records, documents, and physical materials, within thirty (30) days after service of the department's requests for production, or such longer time as the department may agree to.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(g), 12963.1, 12963.4, and 12980(c), Government Code.

§ 10060. Priority Case Processing/Case Grading System

(a) The department shall prioritize investigation of the following housing discrimination complaints: (1) complaints alleging a failure to rent where the desired unit is still available; (2) complaints filed by individuals facing an impending and allegedly discriminatory eviction where action by the department may delay the eviction; (3) complaints alleging a violation of the Ralph Civil Rights Act; (4) a complaint filed by a terminally ill complainant; (3) complaints alleging retaliation occurring within one-hundred-eighty (180) days of the complainant filing a prior complaint of discrimination with the department or participating in a FEHA-related investigation, hearing or court process; (4) any other complaint investigation that warrants priority in the department's discretion.

(b) In addition to the foregoing, to better allocate the department's resources, the department shall identify any housing discrimination complaint filed for investigation that raises complex factual or legal issues, likely would be meritorious, or whose successful litigation would impact a large number of applicants, tenants, or homebuyers if its allegations are proven. The department shall initially designate such complaints as priority complaints and process them in the same manner as other priority complaints. At its discretion, the department's legal division may later designate a priority complaint as a high priority complaint, depending upon its strength and potential for impact.

(c) The department shall preliminarily designate all other housing discrimination complaints filed for investigation as standard complaints.

(d) Such initial designations shall continually be re-evaluated by the department throughout the investigative process, particularly after a response to the complaint is received and analyzed. Thus, a complaint initially designated a standard complaint later could be designated a priority complaint upon receipt and evaluation of additional evidence. Likewise, a complaint originally designated a priority complaint could be designated a standard complaint after reevaluation.

(e) Factors the department considers when determining whether a complaint is a priority or a standard complaint may include, but are not limited to:

(1) whether the alleged unlawful practice affects a group or class of applicants or tenants;

(2) the complexity or strength of the facts alleged;

(3) the severity of the alleged harm;

(4) whether the respondent is large enough such that a remedy would impact a large number of individuals or an entire industry;

(5) whether the complaint allegations address an important legal issue in an area where the department seeks to establish case law.

(f) Priority complaints shall be eligible for allocation of additional department resources and early and on-going collaboration with the department's legal staff.

(g) At no time shall the department disclose to any person outside the department the case grade or designation assigned to any complaint. All records of discussions regarding the grade or designation of a complaint will be marked "Confidential," and be retained in the Confidential section of the department's case file.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12963 and 12980(c), Government Code.

§ 10061. Investigations Not Completed Within Statutory Time Limit

(a) Where an investigation is not completed within the statutory time limit the department may:

(1) continue the investigation;

(2) taking into consideration the complexity of the case, time necessary to complete the investigation, and likelihood of proving discrimination, close the case where continued investigation would be an inefficient use of the department's resources; or

(3) if the case is dual-filed with HUD, waive the case to HUD for continued investigation.

(b) When an investigation is completed after the statutory time limit and the complaint has been found meritorious, the department shall schedule a conciliation conference.

(c) The department shall not issue an accusation when an investigation is completed after the statutory time limit and a complaint has been found meritorious. However the department, in its discretion, may issue a director's complaint.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12930(f)(1) & (h), 12963, 12965, and 12980(c) & (f), 12981(a), Government Code.

§ 10062. Receipt of Confidential Information

(a) "Confidential information" means information acquired by the department in the course of its duties that the department has agreed will not be released to anyone but department staff. Information marked "confidential" by the provider shall not be kept confidential unless there has been prior agreement by the department not to disclose the information.

(b) Information shall be kept confidential by the department only when:

(1) there is no other way for the department to obtain the information; and

(2) the information is expected to lead to other information necessary to the department's investigation which shall not be kept confidential.

(c) Information accepted by the department under an agreement of confidentiality shall not be released by the department for any purpose including, without limitation, obtaining information from a third party, negotiating a settlement, substantiating a case closure or proving a case at hearing or trial.

(d) Information accepted by the department under an agreement of confidentiality shall be kept in a separate envelope or electronic file within a case file that shall be clearly marked as follows:

**CONFIDENTIAL INFORMATION OBTAINED PURSUANT TO
GOVERNMENT CODE SECTION 12932(b) AND EVIDENCE
CODE SECTION 1040. NOT TO BE RELEASED TO ANYONE
BUT DFEH PERSONNEL.**

Note: Authority cited: Section 12930(e). Reference: Reference: Section 1040, Evidence Code; sections 12930(f)(1)-(2) and 12932(b), Government Code.

§ 10063. Accusation

(a) If, after investigation, it is determined by the department that a complaint has merit, the director in his or her discretion may cause a written accusation to be issued in the name of the department. The discretion to issue an accusation may be delegated to the department's chief counsel or his or her designated associate or assistant chief counsel.

(b) An accusation may be issued, if at all, after an unsuccessful post-investigation conciliation conference or, if circumstances warrant, the department may issue an accusation without holding a conciliation conference.

(c) The department has discretion not to issue an accusation when circumstances warrant. Factors considered by the department when determining whether to issue an accusation include, but are not limited to: (1) the strength and sufficiency of the evidence of unlawful conduct; (2) the likelihood of prevailing on the merits at hearing or trial; (3) whether the alleged violation addresses an important legal issue in an area where the department seeks to establish case law; (4) whether issuance of an accusation and subsequent litigation thereof are likely to impact civil rights in a manner consistent with the department's mission; (5) whether the respondent has offered the complainant an equitable remedy the complainant has refused.

Note: Authority cited: Section 12930(e), Government Code. Reference: Sections 12930(h), 12965, 12981(a), and 12981.1, Government Code.

§ 10064. Notice of Case Closure

(a) Whenever a complaint of housing discrimination is withdrawn by the complainant or dismissed by the department, the department shall promptly notify the complainant and respondent of the case closure, and the reason for closure, in writing. The department also shall provide the complainant a list of resources for filing a civil complaint in small claims court or locating private counsel.

(b) When closing a complaint dual-filed with HUD, the department shall satisfy all reporting requirements arising from the department's work-sharing agreement with HUD.

(c) The department shall not issue a right-to-sue notice upon the closure of a housing discrimination complaint unless HUD requires the issuance of a right-to-sue notice before an aggrieved party may file a civil action in court alleging housing discrimination.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12971, 12980(a) & (c), Government Code.

§ 10065. Departmental Appeal

(a) Any individual who wishes to appeal the department's decision to reject a complaint or close a case shall direct his or her concerns to the district or regional administrator of the office that rejected or closed the complaint. Appeals may be presented verbally by telephone or in writing.

(b) Regardless whether an appeal is verbal or written, the district or regional administrator, or other individual delegated any function, power, or duty of the district or regional administrator, shall respond in writing. Where the appeal concerns a complaint rejected for investigation, the district or regional administrator, or his or her designee, also shall draft a complaint for filing purposes only, to be included with the written response.

(c) Any individual dissatisfied with the response of the district or regional administrator may direct his or her further appeal to the deputy director of housing.

(d) Regardless whether the further appeal is verbal or written, the deputy director of housing, or other individual delegated any function, power, or duty of the deputy director of housing, shall respond in writing.

(e) Any individual dissatisfied with the response of the deputy director of housing may direct his or her further appeal to the director.

(f) Regardless whether the further appeal is verbal or written, the director, or his or her designee, shall respond in writing.

(g) The decision of the director is final and may not be appealed to any other department employee, officer, or other individual delegated any function, power, or duty of the department.

(h) Any concerns regarding the handling of an open complaint shall be directed to the district or regional administrator of the office where the complaint is being investigated.

(i) Any individual dissatisfied with the response of the district or regional administrator, or his or her designee, may direct his or her concerns to the deputy director of housing.

(j) The response of the deputy director of housing, or other individual delegated any function, power, or duty of the deputy director of housing, is final and may not be appealed to any other department employee or officer while the complaint is open. After the complaint is closed, any remaining concerns may be directed to the director, whose response, and/or the response of his or her designee, shall be final and nonappealable to any other department employee, officer, or other individual delegated any function, power, or duty of the department.

(k) Any respondent who wishes to complain about the issuance of an accusation against the respondent shall direct his or her concerns to the chief counsel of the department's legal division.

Note: Authority cited: Section 12930(e), Government Code. Reference: Reference: Sections 52(f) and 54.3(b), Civil Code; sections 12965, 12971, 12980(a) & (c), 12981(a), 12981.1, Government Code.

§ 10066. Substantial Equivalence

The provisions of the FEHA affording remedies to victims of housing discrimination shall be construed to afford the same remedies as those afforded under the federal Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 et seq.) and its implementing regulations (24 CFR Parts 100 et seq.), unless those afforded by the FEHA are greater.

Note: Authority cited: Section 12930(e), Government Code. Reference: Section 12955.6, Government Code; *Broadmoor San Clemente Homeowners Assn. v. Nelson* (1994) 25 Cal.App.4th 1, 7-8 [30 Cal.Rptr.2d 316]; 42 U.S.C. § 3601 et seq.; 24 CFR Parts 100 et seq.).